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ACC#1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

IN THE MATTER OF:	)	
	)	
HUSSMANN CORPORATION	)	DOCKET NO. VII-89-H-0018
SECO PRODUCTS DIVISION	)	
Washington, Missouri	)	INITIAL ADMINISTRATIVE ORDER
	)	
Respondent.	)	
	)	
	)	
PROCEEDING UNDER SECTION	)	
3008(h) OF THE RESOURCE	)	
CONSERVATION AND RECOVERY ACT	)	
OF 1976, AS AMENDED BY THE	)	
HAZARDOUS AND SOLID WASTE	)	
AMENDMENTS OF 1984,	)	
42 U.S.C. § 6928(h).	)	

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I. JURISDICTION

1. This Administrative Order is issued to Hussmann Corporation ("Respondent"), Bridgeton, Missouri, pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), 42 U.S.C. § 6928(h). The authority vested in the Administrator has been delegated to the EPA Regional Administrator, Region VII, by EPA Delegation Nos. 8-31 and 8-32, dated March 6, 1986, and further delegated to the Director of the Waste Management Division of EPA, Region VII, by Delegation Nos. R7-8-31 and R7-8-32, dated May 16, 1988.

II. APPLICABILITY

1. This Order shall apply to and be binding upon Hussmann Corporation and its officers, directors, employees, agents, successors, and assigns and upon all persons, contractors and consultants acting on behalf of Respondent. Respondent shall provide copies of this Order to all contractors, subcontractors, laboratories, and consultants performing any work called for by this Order within one (1) week of the effective date of this Order or within one (1) week of the date of retaining any such

contractor, subcontractor, laboratory or consultant and shall condition all such contracts on compliance with the terms of this Order.

2. No change in ownership of the Washington, Missouri facility or change in corporate or partnership status relating to Respondent shall alter Respondent's obligations under this Order.

III. STATEMENT OF PURPOSE

1. The purpose of this Order is to require Respondent to: (1) submit to EPA for review and approval a workplan designed to characterize the hydrogeology of the facility and define the horizontal and vertical extent of groundwater contamination originating from the facility in relation to background levels; (2) upon EPA's approval of said workplan, perform the work included in the approved workplan; and (3) perform any other activities necessary to correct or evaluate actual or potential threats to human health and/or the environment.

IV. FINDINGS OF FACT

1. Hussmann Corporation is a Missouri corporation engaged in the production of food store refrigeration and merchandising equipment. The registered agent for the company is Burton Halpern, 12999 St. Charles Rock Road, Bridgeton, Missouri 63044. From 1985 to 1989, Seco Products was an operating division of Hussmann Corporation, engaged in the business of manufacturing stainless steel food service equipment.

2. Until 1989, Hussmann Corporation, Seco Products Division, owned and operated a manufacturing plant (hereinafter "the facility") located at Old Highway 100 East, Washington, Missouri. The legal description of the facility is as follows:

> Part of U.S. Survey No. 1925 and Part of lots four (4) and five (5) of John W. Bell Estate Subdivision in Township forty-four (44) north, range one (1) west, more fully described as follows: Beginning at the intersection of the centerline of Dubois Creek with the North line of Highway 100, thence eastwardly along said line of Highway 100, 1324.52 feet to an iron pipe, thence north 13 degrees 45 minutes east 344 feet to a 20 inch elm, thence north 54 degrees 31 minutes west 69 feet to a railroad tie, thence north 23 degrees east 242 feet to a corner, thence right at an angle of 140 degrees 196 feet to a corner, thence right at an angle of 140 degrees and parallel with the Missouri Pacific Railroad right of way 470 feet to a corner, thence north 23 degrees west 20 feet to the south right of way line of the Missouri Pacific Railroad, thence westwardly along said right of way line 1450.92 feet to the center line of Dubois Creek, thence along said centerline south 56 degrees 30 minutes west 390.72 feet and south 33 degrees west 195 feet to the point of beginning, according to survey by E.F. Kapplemann, Deputy County Surveyor as recorded in surveyor's record 12, page 85 of the Franklin County records.

3. Until at least August 1980, the facility was owned by McGraw-Edison Food Service Division. Thereafter, it was owned by Bastian-Blessing, Inc., a subsidiary of Bastian Industries, Inc., which later assigned its assets to International Food Service Equipment Systems, Inc. (IFES). On November 1, 1985, Hussmann Corporation acquired ownership of the facility and thereafter operated the facility continuously until July 14, 1989, when the

facility was purchased from Hussmann by Middleby Marshall, Inc., a wholly-owned subsidiary of the Middleby Corporation.

4. On or about August 13, 1980, Respondent, through its previous owner/operators, filed its Notification of Hazardous Waste Activities as a facility that generates, treats, stores and disposes of hazardous wastes. This previous owner/operator was issued EPA Identification Number MOD068549492. On or about November 19, 1980, Respondent, through its previous owner/operators, filed its Part A permit application for its surface impoundment (lagoon). Respondent, through its previous owner/operators, thus achieved interim status for the lagoon area.

5. For the purposes of this Order, the terms "hazardous waste constituent" and "hazardous constituent" refer to the list found at Appendix VIII of 40 C.F.R. Part 261.

6. Respondent and/or the previous owner/operators have indicated in their original and subsequent notifications that they have managed the following hazardous wastes at the facility:

Hazardous Waste	Waste No.
Spent bath solutions from electroplating	F009
Lead	D008
Spent halogenated solvents	F001
Corrosive	D002
Ignitable	D001

7. In the operation of its facility, Respondent has utilized the following solid waste management units:

a. Exterior drum storage area;

b. Field west of plant building - historic acid/metals deposition area;

c. Southern fenceline disposal area;

d. Interior drum storage area;

e. Potential acid/metals deposition area;

f. Fuel oil/trichloroethylene (TCE) tank pad area;

g. Field northeast of lagoon - TCE deposition area;

h. Septic tank and drainage field;

i. Former electropolishing/acid room;

j. Metal particulate exhaust area - heavy metals;

k. Dubois Creek bank - abandoned drums.

8. The surface impoundment (lagoon) was constructed in 1976 and in 1980 obtained interim status for its receipt of wastes from the facility's former electropolishing metal-etching processes. The lagoon ceased receiving these wastes in 1983. A closure plan for the lagoon was approved by the Missouri Department of Natural Resources (MDNR) and EPA and implemented by Respondent. The lagoon was certified closed on or about January 22, 1988.

9. The exterior drum storage area operated until approximately 1985. Waste solvents (F001 and D001) and waste oil in 55-gallon drums were the primary wastes stored in the area. The solvents included such compounds as hexane, toluene and methylene chloride. A closure plan for the drum storage area was approved by MDNR and EPA and implemented by Respondent. It was certified closed January 22, 1988.

10. The historic acid/metals deposition area northwest of the lagoon covers approximately 30,000 square feet. From approximately 1952 to 1976, waste stream effluent from the electropolishing and metal-etching processes were deposited in this area.

11. The southern fenceline is an area approximately 1,300 feet long. From approximately 1952 to 1973, TCE was applied along the fenceline for weed control purposes.

12. The interior drum storage area is located inside the plant building at the facility near a vapor degreaser. Wastes stored at this unit included waste TCE solids and liquids and mixed solvent waste made up of hexane, toluene, and methylene chloride. Paint sludges were also stored at this unit.

13. The potential acid/metals deposition area is approximately 100 feet west of the northwest corner of the plant building. The discolored area is made up of two areas about 10 to 12 feet in diameter and has a greenish tint. No vegetation is growing in this location, which is similar in appearance to the historic acid/metals waste stream deposition area west of the lagoon. Soil samples taken in this area on August 20, 1987, by EPA showed aluminum at 4,000 parts per million, barium at 2,700 parts per million, chromium at 5,000 parts per million, nickel at 1,000 parts per million, and lead at 150 parts per million.

14. The fuel oil/TCE tank pad is located outside the plant building to the north. TCE and fuel storage tanks were located on a gravel pad with no concrete pad. The TCE storage tank was

taken out of service in 1986. The fuel oil tank is still in service. Prior soil sampling collected below the gravel pad has shown elevated levels of TCE at 13,000 parts per billion (ppb), methylene chloride at 79 parts per billion, toluene at 91 parts per billion, trans-1,2-dichloroethylene (t,DCE) at 10,000 parts per billion, 1,1,1-trichloroethane (1,1,1-TCA) at 150 parts per billion, and tetrachloroethylene (PCE) at 170 parts per billion. There is evidence of spillage and vegetative stress at this unit.

15. The field northeast of the lagoon is not an engineered waste disposal unit. Soil contaminated with TCE in this area was found to be segregated from other positive organic vapor readings taken in that area.

16. The septic tank and drainage field is a sand-filter unit used to treat sanitary wastewater from the facility. The effluent is regulated through NPDES Permit #MO-0002577.

17. The former electropolishing/acid room is located along the north wall of the plant building and housed the facility's electropolishing/metal etching processes. It was in operation from approximately 1952 to 1983. Splashing of acid/metals effluent is evidenced by degradation, discoloration, and etching of the concrete floors and walls in the room. The waste stream from the processes was discharged to the field west of the lagoon until approximately 1976. The waste stream was then discharged into the lagoon.

18. The metal particulate exhaust area is not an engineered disposal unit, but exists as a result of routine placement of

metal particulate exhaust therein.

19. The Dubois Creek's east bank on the facility property was the location of several abandoned 55-gallon drums and 8-gallon cans. Some of the drums were only partially visible and drum integrity appeared to be minimal. Those drums that were visible appeared to be empty. All of these drums have been removed.

20. The facility is located along the bluffs of the Missouri River. It is situated on the east side of Dubois Creek, a perennial stream which discharges into the Missouri River about 4,500 feet downstream from the facility. Groundwater gradient information provided to date by Respondent shows the flow to be toward Dubois Creek. Groundwater discharge is to the Missouri River with some discharging to Dubois Creek. The creek is used for fishing and is a source of drinking water for area wildlife.

21. The facility is situated on the southern edge of a small Missouri River alluvial terrace where the surface drainage enters Dubois Creek. The thickness of the alluvial materials ranges from zero at approximately 1,000 feet south of the facility to 100 feet on the north edge of the terrace. Formations in the area are considered to be leaky artesian in nature. Between the production horizons and the surface are formations which retard, but do not completely inhibit, vertical migration of groundwater. The depth to groundwater ranges from 10 feet in the area around the lagoon to 20 feet at the south fenceline area. The uppermost bedrock aquifer is the Jefferson

City Formation, which consists predominantly of dolomitic limestone and yields small quantities of water. Based on the production well drilling log, the Jefferson City Formation lies between 75 and 140 feet beneath the facility. Underlying the Jefferson City Formation is the Roubidoux Formation at depths ranging from 150 feet to 300 feet. The primary water-bearing aquifer of the region is the Eminence-Potosi which lies between 575 to 1000 feet deep. Most residential wells in the vicinity are completed in the Roubidoux/Jefferson City Formations. Commercial wells (including the facility's production well) and the municipal wells are completed in the Eminence-Potosi Formation.

22. The migration pathways and associated receptors for the facility are the alluvial aquifer pathway with no known users within two miles of the facility; the bedrock aquifers due to infiltration from the alluvial aquifer with the associated receptors being the residents using groundwater from the bedrock aquifer which supplies the principal source of water for area residential wells and the City of Washington's municipal wells; the Dubois Creek/Missouri River system pathway with the associated receptors being the aquatic ecosystem; the air release pathways where the most likely receptors could be the workers conducting remedial activities at the facility and employees of the facility; and the subsurface gas pathways where the most likely receptors could be the workers conducting remedial activities at the facility and the employees of the facility.

23. As part of an Administrative Order on Consent issued by EPA pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), and filed on May 25, 1989, Hussmann Corporation agreed to "conduct a remedial action plan to determine the nature and extent of any release of hazardous waste and hazardous waste constituents at or from the facility and to implement corrective measures which address any such release of hazardous waste or hazardous waste constituents and are protective of human health and the environment."

24. Respondent initially installed a groundwater monitoring system at the facility consisting of six monitoring wells in the upper portion of the alluvium, three deep wells, six middle wells and three additional shallow wells. One deep well and one shallow well were later plugged. Respondent has conducted periodic sampling of these wells since 1982. Sampling of the groundwater conducted by Respondent has revealed levels of dichloroethylene (DCE) in excess of 12,000 parts per billion, levels of trichloroethylene (TCE) in excess of 95,000 parts per billion, and levels of vinyl chloride in excess of 70 parts per billion. A map identifying the location of these wells is attached hereto as Figure 1 and is incorporated by reference herein.

25. Analysis of data from the wells which were installed indicates the following:

a. Shallow sand aquifer. In the six recovery wells which are pumping from both the shallow and middle sand aquifers,

levels of DCE, TCE and vinyl chloride are elevated, with total volatile organic compounds (VOCs) ranging up to several thousand parts per billion (ppb). There are no monitoring wells downgradient from these areas nor along the edge of the facility property adjacent to Dubois Creek to assist in defining the horizontal extent of groundwater contamination. The effectiveness of the recovery system in the shallow sand aquifer cannot be determined in the absence of additional shallow monitoring wells regionally downgradient from the recovery system.

b. Middle sand aquifer. The recovery well system wells located in the north, east and northeast portions of the facility are highly contaminated. These wells are screened through the shallow and middle sand units, thereby making it impossible to determine which zone is contributing the greatest levels of contaminants. There are no monitoring wells regionally downgradient of the extraction system to assist in defining the lateral extent of groundwater contamination. There are also no middle sand monitoring wells in the upgradient direction that can be considered as background due to various levels of VOC contamination.

c. Deep sand aquifer. Groundwater data for three monitoring wells screened in the deep sand aquifer overlying bedrock at the facility indicates the presence of low levels of trichloromonofluoromethane. Based upon the data provided by Respondent, it is not known whether these levels are present due

to laboratory contamination or to the fact that they are actual groundwater contaminants. The groundwater recovery system does not make provision for ensuring that vertical migration is not occurring.

d. Northeast lagoon area. A soil vapor survey of the northeast lagoon area indicates high levels of organic compounds; however, there are no monitoring wells in this area to determine if this has had an impact upon the groundwater.

26. The following hazardous wastes or hazardous waste constituents have been found in groundwater, surface water, and/or soil at the facility. These constituents can cause adverse health effects in humans and animals. Therefore, the presence of these contaminants poses a threat to human health or the environment. Documented effects and standards are listed as follows:

a. 1,2-Dichloroethylene. 1,2-Dichloroethylene is a hazardous waste and an EPA priority toxic pollutant. The maximum contaminant level (MCL) for 1,2-Dichloroethylene is 70 parts per billion. Routes of entry into living organisms are through inhalation of its vapor, ingestion, and skin and eye contact. Liquid 1,2-dichloroethylene can act as a primary irritant producing harmful local effects including dermatitis and irritation of mucous membranes. 1,1-dichloroethylene can act principally as a narcotic, causing harmful systemic effects such as central nervous system depression. Symptoms of acute exposure include dizziness, nausea and frequent vomiting, and central

nervous system intoxication similar to that caused by alcohol. Renal effects, when they do occur, are transient. Points of attack are the respiratory system, the eyes, and the central nervous system. The MCL for 1,1-dichloroethlene is 7 parts per billion.

b. Trichloroethylene. Trichloroethylene is a hazardous waste, a known carcinogen, and an EPA priority toxic pollutant. When decomposed due to contact with hot metal or ultraviolet radiation, trichloroethylene can form chlorine gas, hydrogen chloride, and phosgene. Routes of entry include inhalation, ingestion, and skin and eye contact. Local harmful effects include vapor-induced irritation of the eyes, nose and throat. Liquid trichloroethylene, if splashed in the eyes, may cause burning irritation and damage. Repeated or prolonged skin contact with this substance in liquid form may cause dermatitis. Acute systemic exposure to trichloroethylene depresses the central nervous system causing headaches, dizziness, vertigo, tremors, nausea and vomiting, irregular heart beat, sleepiness, fatigue, blurred vision, intoxication similar to that caused by alcohol, and infrequently, unconsciousness and death. The National Cancer Institute (NCI) in the United States has issued a "state of concern" alert, warning producers, users, and regulatory agencies that trichloroethylene, when administered by gastric intubation to mice, induced predominantly hepatocellular carcinomas with some metastases to the lungs. Points of attack are the respiratory system, the heart, the liver, the kidneys,

the central nervous system and the skin. The MCL for trichloroethylene is 5 parts per billion.

c. Vinyl chloride. Vinyl chloride is a hazardous waste, a known carcinogen, and an EPA priority toxic pollutant. Routes of entry include inhalation of vinyl chloride gas and skin absorption of this gas has also been suggested. Vinyl chloride is a skin irritant, and contact with the liquid may cause frostbite upon evaporation. Immediate and severe irritation to the eyes can also occur upon contact with the liquid. Vinyl chloride depresses the central nervous system causing symptoms that resemble those normally associated with mild alcohol intoxication. Lightheadedness, nausea, and dulling of visual and auditory responses may develop in acute exposures. Severe exposures have resulted in death. Chronic exposure may result in the triad of acroosteolysis, Raynaud's phenomenon, and sclerodermatous skin changes. Chronic exposure may also cause hepatic damage. Vinyl chloride is regarded as a human carcinogen and a cause of angiosarcoma of the liver. Excess cancers of the lung, and the lymphatic and nervous systems have also been reported. Points of attack include the liver, the brain, and the hemato-lymphopoietic system. The MCL for vinyl chloride is 2 parts per billion.

d. Trichloromonofluoromethane. Synonyms for trichloromonofluoromethane are fluorotrichloromethane, monofluorotrichloromethane, trichlorofluoromethane, Freon 11 and F-11. Routes of entry include inhalation, ingestion, and eye and

skin contact. Harmful effects caused by exposure to trichloromonofluoromethane include incoherence, tremors, dermatitis, frostbite, cardiac arrhythmias and cardiac arrest. Points of attack include the skin and the cardiovascular system.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the foregoing Findings of Fact and the Administrative Record, the Waste Management Division Director, EPA Region VII, hereby concludes and determines as follows:

1. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

2. Respondent is the owner or operator of a facility that has operated or is operating subject to the interim status requirements of RCRA, within the meaning of Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).

3. Certain wastes and constituents thereof found at the facility are hazardous wastes and/or hazardous waste constituents as defined by Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), Section 3001 of RCRA, 42 U.S.C. § 6921, and 40 C.F.R. Parts 260 and 261.

4. There is or has been a release of hazardous wastes and/or hazardous waste constituents into the environment from the facility.

5. The actions required by this Order are necessary to protect human health and the environment.

VI. WORK TO BE PERFORMED

1. Within forty-five (45) days after the effective date of this Order, Respondent shall submit to EPA for review and approval a workplan designed to characterize the geology and hydrology of the facility and define the horizontal and vertical extent of groundwater contamination originating from the facility in relation to background levels and a schedule for implementation of the workplan. At a minimum, this workplan shall include the following:

a. Provisions to delineate the horizontal and vertical extent of any contaminant plumes through the installation, development and sampling of additional monitoring well clusters completed in hydraulically distinct subsurface zones (the shallow, middle and deep sand aquifers). The workplan shall include installation and monitoring of a bedrock well(s) isolated in a zone which is identified as the lower most confining layer and which prevents the vertical movement of contaminants. The bedrock well(s) must be tested to demonstrate hydraulic competence and value of the bedrock as a relative aquitard for the site. If contamination is present in the deep sand aquifer, or in stratigraphic bedrock lows adjacent to contaminant source areas, installation of additional bedrock wells will be required to definitively establish the horizontal and vertical extent of groundwater contamination and assess the movement of contaminants in the bedrock zone;

b. Presentation of the horizontal extent of the

contaminant plume(s) on individual isoconcentration maps for the shallow, middle and deep sand aquifers;

c. Presentation of contour maps which delineate the top of competent bedrock as based on information obtained from monitoring wells drilled through the deep sand to bedrock;

d. Verification of the direction(s) of groundwater flow for the shallow, middle, and deep sand aquifers through the installation of monitoring well clusters located near existing MW-2 and toward the southeast corner of the facility;

e. Presentation of groundwater flow directions for the shallow, middle and deep sand zones on separate, individual, potentiometric contour maps;

f. Stratigraphic and hydrologic characterization at site-specific scale (as opposed to regional scale) capable of establishing the hydrostratigraphic units and providing understanding of vertical lithologic gradations and lateral facies changes. This characterization must be used to develop an adequate understanding of the groundwater flow system and contaminant transport at and near the site and shall include preparation of detailed hydrologic cross-sections through installation of additional, continuously sampled exploratory borings drilled to bedrock near the eastern facility boundary and along Dubois Creek;

g. Delineation of the width and depth of Dubois Creek at the middle, and close to each end, of the section that crosses facility property, by surveyed cross-sections referenced to

elevation (msl);

h. Establishment of a stream monitoring and gaging station onsite or identification of an adequate existing station;

i. Assessment of the effectiveness of the existing groundwater recovery system by means of the installation of additional monitoring well clusters to the west and north of the existing recovery wells;

j. Identification of upgradient wells and background VOC levels in the shallow, middle, and deep sand aquifers based on the groundwater flow direction(s) and analytical data obtained from the installation, monitoring and sampling of additional monitoring wells;

k. Installation of additional monitoring wells on the west side of Dubois Creek in the event that horizontal contaminant migration has occurred to the edge of the creek;

l. Continued monitoring of the deep sand aquifer to ensure that vertical migration is not occurring;

m. Installation of groundwater monitoring well clusters in the Northeast Lagoon Area which are screened discretely in both the shallow and middle sand zones to determine if contamination resulting from operations in this area has impacted the groundwater;

n. Monitoring of all new and existing wells on a quarterly basis;

o. Presentation of all historic and current monitoring well data including, but not limited to, water levels, stabilized

field screening parameters, and laboratory analytical results for t,1,2,dce; 1,2,dca; 1,1,dce; 1,1,dca; 1,1,1,tca; tce, vinyl chloride, benzene, and toluene, shown chronologically, in individual tabular and/or graphical displays, by well.

2. Following submission of the draft workplan and schedule for implementation thereof required by Section VI, Paragraph 1 of this Order, EPA will review same and provide written comments to Respondent in regard thereto. Within twenty-one (21) days after receipt of EPA's comments, Respondent shall submit a revised workplan to EPA, containing those revisions to the draft required by EPA in its comments thereon. Upon receipt of EPA's Notification of Approval or Notification of Approval with Modifications as set forth in Section VII herein, Respondent shall implement the workplan in accordance with the terms and schedules contained therein and any conditions imposed by EPA. The final workplan shall be incorporated as a part of this Order.

3. If, in any workplan submitted pursuant to this Order, Respondent relies upon any previously submitted data or report, Respondent shall identify any data or report upon which Respondent relied and the date of its submission. In the event such data or reports do not provide all information necessary to meet the requirements of the workplan, Respondent shall perform all additional investigative work required to complete these tasks.

4. All work undertaken pursuant to this Order is subject to EPA approval and shall be performed in a manner consistent with

RCRA and its implementing regulations, and relevant EPA guidance documents. EPA guidance that is relevant to the performance of the activities specified in this Order includes the "RCRA Corrective Action Plan" (EPA 530/SW-88-028, June 1988), "RCRA Facility Investigation (RFI) Guidance" (Volumes I-IV), (EPA 530/SW-89-031, May 1989), "RCRA Ground Water Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1, September 1986), "Test Methods for Evaluating Solid Waste" (SW-846, November 1986), and the "Handbook of Suggested Practices for Design and Installation of Ground Water Monitoring Wells" (EPA 600/4-89/034, October 1989). These guidance documents may be obtained by contacting the U.S. Environmental Protection Agency, Office of Solid Waste Information Center, 401 M Street, S.W., Washington, D.C. 20460, telephone 1-800-424-9346. Any additional guidance documents that are to be used by the parties in implementing this Order will be provided to Respondent as soon as they are publicly available.

VII. SUBMISSIONS/AGENCY APPROVAL/ADDITIONAL WORK

1. During the pendency of this Order, Respondent shall provide EPA with bi-monthly progress reports on the tenth (10th) day of every month commencing the month following the effective date of this Order. The progress reports shall include a summary of all action undertaken pursuant to this Order during the previous reporting period, including: work completed, tasks scheduled for the next reporting period, operation and

maintenance of the groundwater monitoring system, narrative summary of the efficacy of the system for its intended purpose, assessment monitoring, all data generated along with interpretation for such data, problems encountered and actions taken to correct and/or prevent their recurrence, and a summary of the effectiveness of actions taken.

2. EPA will review all reports, schedules and workplans required to be submitted pursuant to this Order and notify Respondent in writing of EPA's approval or disapproval. In the event of EPA disapproval of any report, schedule or workplan, EPA will notify Respondent of any deficiencies in writing and the reasons for disapproval. Respondent shall, within twenty-one (21) days of receipt of the written disapproval, submit a revised report, schedule or workplan, addressing EPA's comments. If EPA disapproves the revised report, schedule or workplan, EPA may prepare a report, schedule or workplan for implementation by Respondent (Notification of Approval with Modifications). All reports, schedules or workplans either approved or developed by EPA shall be incorporated into and become part of this Order. Any noncompliance with such reports, workplans or schedules shall be considered noncompliance with this Order and shall subject Respondent to penalties as provided for in Section XIV of this Order.

3. Three copies of all documents, including workplans, reports, and other correspondence required to be submitted pursuant to this Order shall be sent to the Project Coordinator

designated pursuant to Section XII of this Order. Two copies of all such documents shall be sent to Edward Sadler, Director, Waste Management Program, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65102.

4. All work performed pursuant to this Order shall be under the direction and supervision of a professional engineer or geologist with expertise in hazardous waste site cleanup. Respondent shall notify EPA in writing of the name, title, and qualifications of the engineer or geologist within thirty (30) days of the effective date of this Order, and of any contractors or subcontractors to be used in carrying out the terms of this Order within fifteen (15) days of retaining such contractors or subcontractors.

5. EPA may determine that certain additional tasks are necessary in addition to or in lieu of the tasks included in any EPA-approved workplan when such additional work is necessary to meet the purposes set forth in Section III, Statement of Purpose, including but not limited to, RCRA facility investigatory work. Respondent shall perform any such tasks requested by EPA.

VIII. QUALITY ASSURANCE

1. Throughout all sample collection and analysis activities, Respondent shall use EPA-approved quality assurance, quality control, and chain-of-custody procedures as specified in the approved workplan(s). In addition, Respondent shall:

a. Ensure that laboratories used by Respondent for

analyses perform such analyses according to the EPA methods included in "Test Methods for Evaluating Solid Waste" (SW-846, 1988) or other methods approved by EPA. If methods other than EPA methods are to be used, Respondent shall submit all protocols to be used for analyses to EPA for approval sixty (60) days prior to the commencement of analysis;

b. Ensure that laboratories used by Respondent for analyses participate in a quality assurance/quality control program equivalent to that which is followed by EPA. As part of such a program, and upon request by EPA, such laboratories shall perform analyses of samples provided by EPA to demonstrate the quality of the analytical data; and

c. Inform the EPA Project Coordinator thirty (30) days in advance which laboratories will be selected or used by Respondent and ensure that EPA personnel and EPA-authorized representatives have access to the laboratories and personnel used for analyses.

IX. ON-SITE AND OFF-SITE ACCESS

1. EPA, its contractors, employees and/or any authorized representatives of EPA shall have access to the facility for the purposes of reviewing the progress of Respondent in carrying out the provisions of this Order, inspecting facility records and operating logs relevant to enforcement of this Order and conducting tests and monitoring and collecting samples related to enforcement of this Order.

2. To the extent that work required by this Order must be done on property not owned or controlled by Respondent, Respondent shall use its best efforts to obtain site access agreements from the present owner(s) of such property within fifteen (15) days of approval of any workplans for which site access is required. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondent to the owner(s) of such property requesting access agreement(s) to permit Respondent, EPA and EPA's authorized representatives to access such property and the payment of a reasonable sum of money in consideration of granting access. In the event that agreements for access are not obtained within fifteen (15) days of the approval of said workplans, Respondent shall notify EPA in writing within seven (7) days thereafter regarding both the efforts undertaken to obtain access and its failure to obtain such agreements. In the event that EPA obtains access, Respondent shall undertake EPA-approved work on such property.

3. Nothing in this section shall limit or otherwise affect EPA's right of access and entry pursuant to RCRA, CERCLA or any other legal authority.

4. Nothing in this section shall be construed to limit or otherwise affect Respondent's liability and obligation to perform corrective measures, including corrective measures beyond the facility boundary, notwithstanding the lack of access.

X. SAMPLING AND DATA/DOCUMENT AVAILABILITY

1. Respondent shall submit to EPA the results of all sampling and/or tests or other data generated by, or on behalf of Respondent, in accordance with the requirements of Section VII of this Order. Notwithstanding these requirements, Respondent shall submit such results or data within ten (10) calendar days of an EPA written request.

2. Respondent shall notify EPA in writing at least fourteen (14) calendar days prior to engaging in any field activities, such as well drilling or installation of equipment, and at least thirty (30) calendar days in advance of any sampling activity. At EPA's request, Respondent shall provide or allow EPA or its authorized representative to take split samples of all samples collected by Respondent pursuant to this Order.

3. Respondent may assert a business confidentiality claim covering all or part of any information submitted to EPA pursuant to this Order. Any claim of confidentiality shall be adequately substantiated by Respondent when the claim is made. Information determined to be confidential by EPA will be disclosed only to the extent permitted by 40 C.F.R. Part 2. If no such confidentiality claim accompanies the information when it is submitted to EPA, the information may be made available to the public by EPA without further notice to Respondent. Physical or analytical data shall not be deemed confidential.

XI. RECORD PRESERVATION

1. For the purpose of this section, "record(s)" includes all original copies of field notes and test and sampling results, and final copies of documents, drawings, and tabulations prepared by Respondent, its employees, agents, or contractors related to this Order.

2. In accordance with 40 C.F.R. § 265.94(b)(1), Respondent shall preserve all records and documents in its possession or in the possession of its agents, consultants, or contractors which relate to the monitoring and/or assessment of groundwater contamination.

3. Respondent shall preserve such records during the pendency of this Order and for a minimum of six (6) years after the termination of this Order. Thereafter, Respondent shall notify EPA in writing thirty (30) calendar days prior to destruction of any such record. Upon request by EPA within such thirty (30) calendar day period, Respondent shall make such records available to EPA.

XII. PROJECT COORDINATOR

1. Within fourteen (14) calendar days of the effective date of this Order, Respondent shall designate a Project Coordinator and shall notify EPA in writing of the Project Coordinator it has selected.

2. The Project Coordinator for EPA is:

Cynthia Hutchison
U.S. Environmental Protection Agency
RCRA/RCOM Section
726 Minnesota Avenue
Kansas City, Kansas 66101
Telephone: (913) 551-7478

3. Each Project Coordinator shall be responsible for overseeing the implementation of this Order and shall serve as each party's designated representative. All communications between Respondent and EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the Project Coordinators.

4. Respondent shall provide EPA at least fifteen (15) days written notice prior to changing Project Coordinators.

5. The absence of the EPA Project Coordinator from the facility shall not be cause for the stoppage of work.

XIII. NOTIFICATIONS

1. Unless otherwise specified, three (3) copies of all reports, correspondence, approvals, disapprovals, notices or other submissions relating to or required under this Order shall be in writing and shall be sent to:

Cynthia Hutchison
U.S. Environmental Protection Agency
RCRA/RCOM Section
726 Minnesota Avenue
Kansas City, Kansas 66101
Telephone: (913) 551-7478

XIV. PENALTIES FOR NONCOMPLIANCE

1. If Respondent fails to comply with the terms and/or provisions of this Order, EPA may commence an action to require compliance and to assess a civil penalty not to exceed $25,000.00 for each day of noncompliance, pursuant to Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2), or to issue subsequent orders.

XV. RESERVATION OF RIGHTS

1. EPA expressly reserves all rights that it may have, including both the right to disapprove of work performed by Respondent pursuant to this Order and the right to request that Respondent perform tasks in addition to those stated in the workplan required by this Order.

2. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Order, including without limitation the assessment of penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2). This Order shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory or common law authority of the United States.

3. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with

RCRA or any other applicable local, state or federal laws and regulations.

4. This Order shall not limit or otherwise preclude EPA from taking additional enforcement action pursuant to Section 3008(h) of RCRA or other available legal authorities should EPA determine that such actions are warranted and necessary to protect human health and the environment.

5. This Order is not intended to be nor shall it be construed as a permit. This Order does not relieve Respondent of any obligation to obtain and comply with any local, state or federal permits.

6. EPA reserves the right to perform any portion of the work herein or any additional site characterization, feasibility study, and response/corrective actions as it deems necessary to protect human health and the environment. EPA may exercise its authority under CERCLA to undertake removal actions or remedial actions at any time. In any event, EPA reserves its right to seek reimbursement from Respondent for such additional costs incurred by the United States. Notwithstanding compliance with the terms of this Order, Respondent is not released from liability, if any, for the costs of any response actions taken or authorized by EPA.

7. If EPA determines that activities in compliance or noncompliance with this Order have caused or may cause a release of hazardous waste, hazardous waste constituents or a threat to human health or the environment or that Respondent is not capable

of undertaking any studies or corrective measures ordered, EPA may order Respondent to stop further implementation of this Order for such period of time as EPA determines may be needed to abate any such release or threat and/or to undertake any action which EPA determines is necessary to abate such release or threat.

XVI. OTHER CLAIMS

1. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous waste constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the facility.

XVII. OTHER APPLICABLE LAWS

1. All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XVIII. SUBSEQUENT MODIFICATION

1. This Order, including any report, workplan, statement of work, specification, or schedule approved herein as a requirement of this Order, may be amended or modified by EPA in writing to ensure the protection of human health and/or the environment.

XIX. SEVERABILITY

1. If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

XX. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

1. In accordance with Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. § 24.05(a), this Order shall become final and effective unless Respondent files a response and requests a public hearing in writing no later than thirty (30) days after service of the Order. Respondent has a right to request a hearing with respect to any issue of material fact or the appropriateness of the proposed corrective action. If a hearing is requested, the procedures in 40 C.F.R. Part 24, attached, shall apply.

2. The response and request for hearing must be filed with:

Vanessa Cobbs
Regional Hearing Clerk
U.S. EPA Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

A copy of the response and request for hearing and copies of all subsequent documents filed in this action should be sent to the attention of Leslie A. Humphrey, Office of Regional Counsel, at the same address. The response to this Order must specify each factual or legal determination, or relief provision in the Order, Respondent disputes and shall specify the basis upon which it disputes such determination or provision. The response should also include any proposals for modification of the Order. Because the Order directs Respondent to conduct only investigations and/or studies, such as monitoring, surveys, testing, information gathering, and analyses, the hearing procedures in Subpart B of 40 C.F.R. Part 24 should be employed for any requested hearing. Respondent may include, with its response to this Order and request for hearing, a statement indicating whether it believes the Subpart B or Subpart C hearing procedures should be employed for the requested hearing and the reasons therefor.

3. If Respondent fails to file a response and request for hearing within thirty (30) days after service of this Order, Respondent will be deemed to have waived its right to a hearing and this Order will become final and effective.

XXI. SETTLEMENT CONFERENCE

1. Whether or not Respondent requests a hearing, an informal conference may be requested at any time to discuss the facts of this case and to discuss potential settlement. To request an informal conference, please contact:

Leslie A. Humphrey
Assistant Regional Counsel
U.S. EPA Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

A request for an informal conference does not extend the thirty (30) day period during which a written response and request for a hearing must be submitted. The informal conference procedure may be pursued simultaneously with the public hearing procedure.

XXII. TERMINATION AND SATISFACTION

1. The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the terms of this Order, including any additional tasks determined by EPA to be required pursuant to this Order, have been satisfactorily completed.

XXIII. EFFECTIVE DATE

1. This Order shall become final and effective thirty (30) calendar days after it is served, unless Respondent requests a public hearing pursuant to RCRA Section 3008(b), 42 U.S.C. § 6928(b).

IT IS SO ORDERED.

11/30/92
Date

Leslie A. Humphrey
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

11/30/92
Date

David A. Wagoner
Director, Waste Management Division
U.S. Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101